Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

CIRCLE NATIVE COMMUNITY,

Petitioner,

v.

STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Alaska

MEMORANDUM IN REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY

The State's Opposition to the Tribe's Petition for Review acknowledges the irreconcilable conflict between the decisions of the Ninth Circuit Court of Appeals and the Alaska Supreme Court over the power of Alaska Native Tribes to exercise judicial powers over Indian child custody proceedings. Opp. at 5-6. The State does not suggest that this entrenched conflict can be resolved in any way other than review by this Court. Rather, the State's opposition to the petition, seeks to avoid resolution of the conflict by raising a series of questionable issues that were not raised in the State court proceedings prior to the decision of the Alaska Supreme Court below. Upon remand from the decision below, the State Superior Court (the trial court), temporarily vacated orders allowing the Tribes intervention in the ongoing proceedings based upon erroneous allegations respecting the children's tribal membership and the Tribe's governmental form. These issues have now been resolved, and the Tribe has successfully re-intervened in the remanded proceedings after establishing the children's tribal membership and the lawful succession of the current tribal governments (Petitioner, Circle Native Communities) to the former tribal government.

There is now no question that the children are eligible for membership in the petitioner Tribe. That tribal membership determination was acknowledged by the California courts. It was acquiesced in by the children's mother and the State throughout the proceedings. It was not contested until after the Alaska Supreme Court remanded the matter. Subsequently, the Superior Court reconfirmed the tribal membership determination in the

remanded proceedings. The tribal determination of membership is conclusive as a matter of law and pursuant to the terms of a formal agreement between the Tribe and the State under Section 109 of the Indian Child Welfare Act.

The fact that the Tribe changed its name as part of its reorganization process, under the terms of the Indian Reorganization Act, has no bearing on the reviewability of the decision below. Petitioner had informed the State and the Alaska Supreme Court of this reorganization and name change. The State did not take issue of the matter. The Alaska Supreme Court did not view the question as a barrier to its authority to decide the case. Nonetheless, the Tribe has subsequently proven that the new tribal government is recognized by the BIA as the successor government for the Tribe.

In short, these issues were red herrings when raised and have been resolved in the remanded proceedings before the trial court. The real issue in this case is the conflict between the Ninth Circuit Court of Appeals and the Alaska Supreme Court respecting tribal powers over tribal children. This conflict continues to disrupt the Petitioner's lawful efforts to protect the tribal children involved in this case from abuse and neglect. Moreover, this conflict undermines the ability of Alaska tribes to protect their most important resource: their children.

ARGUMENT

I. PETITIONER CIRCLE NATIVE COMMUNITY IS THE "INDIAN CHILD'S TRIBE" WITHIN THE MEANING OF ICWA.

The State's Opposition to the Tribe's petition for certiorari argues that the children involved in this case are

not members of the Tribe. This is a new issue that was not raised until after remand by the Alaska Supreme Court. In any case, these assertions have now been disproven, and the Petitioner has provided evidence of the eligibility of the children for membership in the Tribe by tribal resolution. See Appendix A. The Petitioner is therefore the Indian children's tribe as defined in ICWA. 25 U.S.C. §1903(5). Additionally, the Alaska Superior Court has reinstated the Tribes intervention in the ongoing case by order entered on May 11, 1993. See Appendix B.[1] This issue is moot.

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[1] The opinion of the Alaska Supreme Court in this case was entered on December 18, 1992. Three months later, after remand to the Alaska Superior Court, the State requested orders from the Superior Court vacating its initial orders allowing the Tribe's intervention in the proceedings, alleging that the Tribe had committed fraud respecting the tribal membership of the children. The argument caught the Tribe by surprise, since the State had originally notified the Tribe of the proceedings, filed pleadings with the Court alleging that Circle was the children's tribe and had entered a non-opposition to the Tribe's intervention.

In response, the Tribe provided tribal council resolutions to evidence the mother's tribal membership, and the eligibility of the children for membership in the Tribe. Additionally, the Tribe submitted copies of an agreement between the Tribe and the State respecting child custody proceedings. [Appendix C]. The agreement was authorized by Sec. 109 of ICWA [25 U.S.C. §1919] and AS 47.10.230(g), and became effective on Feb. 3, 1991. [id.] Notably, Sec. II(A) reads

> The Tribe's determination of a child's membership in the tribe shall be conclusive.

Additionally, Sec. II (B) is a stipulation that the State will not oppose any intervention by the Circle tribe unless another tribe seeks intervention, which is not the case in the matter at bar. The motions by the State to vacate the intervention orders on remand were a violation of that agreement.

II. THE CIRCLE NATIVE COMMUNITY IS AN INDIAN TRIBE UNDER ICWA.

In its opposition the State raises, for the first time in this litigation, the issue of Petitioner Circle Native Community's

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The terms of the 109 agreement are merely a reflection of the law. This Court in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978) held that a "tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence. . . . the judiciary should not rush to create causes of action that would intrude on these delicate matters." In *Martinez v. Southern Ute Tribe*, 249 F.2d 985 (9th Cir. 1957) *cert. denied*, 356 U.S. 960, the court held that absent express federal legislation, a tribe has complete authority to determine its membership, except where the question involves the distribution of property subject to federal supervision. Similarly, it is generally accepted that state Courts should not interfere with a tribe's rights to determine its own membership. *Patterson v. Council of the Seneca Nation*, 245 N.Y. 433, 157 N.E. 734 (1927); *See* COHEN, HANDBOOK OF FEDERAL INDIAN LAW, 20-23 (1982); Cf. *Ollestead v. Native Village of Tyonek*, 560 P.2d 31 (Alaska, 1977). The Indian Child Welfare Act itself provides that states will accord full faith and credit to the public acts of the tribes, which, presumably, would include membership determinations. 25 U.S.C. §1911(d). *See also* 44 Fed. Reg. 67,584, §B1(b)(1) (1979) (BIA ICWA Guidelines).

The matter was apparently confused by the State's lack of knowledge respecting internal tribal affairs. In its opposition memorandum, the State presents a document which purports to be a tribal constitution dating from 1970 (see State's Opp. Memo, App. 2). Additionally, the State baldly asserts that the 1970 document was the only constitution in effect in 1990. *Id.* 11 n.2. The record below simply does not support this assertion. The facts of the matter are that in 1991 there was a constitutional debate within the Tribe which was stimulated by the Tribes request for a Secretarial election under the Indian Reorganization Act. 25 U.S.C. §476. One tribal faction believed that the pending IRA constitution was an interim constitution, while

tribal status. The State has never contested the tribal status of Circle Village. Nor does it contest the status of the "Native Village of Circle", which was the tribal government's name prior to its reorganization under the Indian Reorganization Act, 25 U.S.C. §476, and with whom the State entered into an agreement under §109 of ICWA.[2] In fact, the terms of the 109 agreement specifically acknowledge the tribal status of Circle and the government to government relationship created by the agreement. [Appendix C]. But, the State now questions whether the Circle Native Community, the tribal government reorganized under the IRA in mid-1991, is a successor tribal government to the former traditional tribal government, which originally intervened in the California and Alaska state court proceedings.

The Petitioner informed the Alaska Supreme Court's of these developments in its opening brief in the proceedings below. [Appendix D, at footnote 1] Petitioner

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another faction believed that the 1970 constitution was the tribal constitution. This controversy was ultimately resolved by the Secretarial (BIA) election in 1991. As a practical matter, however, the issue was irrelevant given the 109 agreement with the State which confirmed the tribal council's right to determine membership issues.

[2] As noted by the State, the ICWA's definition of Indian tribe specifically includes any village as defined in the Alaska Native Claims Settlement Act. 24 U.S.C. §1903(8). Circle was listed as a village in the Alaska Native Claims Settlement Act. 43 U.S.C. §1610(b)(1). The tribal status of Circle was confirmed by the Court in *Noatak v. Hoffman*, 896 F.2d 1157 (9th Cir. 1990), rev. on other grounds *Blatchford v. Native Village of Noatak*, 111 S.Ct. 2578 (1991).

informed the Court of its name change and the governmental reorganization under the IRA. The state did not raise the issue of succession at that time, nor did the State Supreme Court consider the matter particularly relevant. The succession issue was simply not, and is not now, at issue with respect to the issue for which this petition seeks review.

On remand from the State Supreme Court's decision below, however, the issue was raised before the trial Court for the first time. In response, the Tribe submitted an affidavit of Regina Perot, Alaska Area Tribal Operations Officer, Bureau of Indian Affairs, which clearly states that the Petitioner, Circle Native Community (IRA), is the successor government to the Native Village of Circle. [Appendix E].[3]

As a general matter, the political branch's recognition of a group of Indians as an Indian tribe is considered to be a non-justiciable political question, subject only to limited judicial review as to whether the action is tied rationally to the fulfillment of Congress' unique obligation toward Indians. *Baker v. Carr*, 329 U.S. 186, 214-15 (1962). This case does not deal with the issue of whether Circle is an Indian tribe. As noted above, the State is only questioning whether the Circle Native Community Council is the government for the Tribe. Generally, Indian tribes are free to structure their governments as they see

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[3] The affidavit was further supported by copies of correspondence between the tribe and the BIA which documented the reorganizational process and demonstrated the traditional government's participation and evolution into the IRA government.

fit. *See Howlett v. Salish and Kootenai Tribes*, 529 F.2d 233 (9th Cir. 1976). In this case, the reorganization of the tribal government under the IRA, which occurred in 1991, is recognized by the federal government as the Tribe's successor government by the BIA. There is nothing in the record, nor any argument, which suggests that the federal action of approving the Tribe's reorganization was not "tied rationally to the fulfillment of Congress' unique obligation toward Indians." Absent such a record, the federal government's recognition of the Petitioner Circle Native Community Council as the successor tribal government is non-justiciable.[4] Petitioner is therefore the proper (and only authorized) party to seek review of the decision below, which undermines the Tribes authority over its children.

III. THE PETITION PRESENTS AN IMPORTANT ISSUE ON WHICH THERE IS AN EXPLICIT CONFLICT BETWEEN THE NINTH CIRCUIT COURT OF APPEALS AND THE ALASKA SUPREME COURT.

The issue presented in the Tribe's petition is fairly straightforward. Specifically, "Do Alaskan Tribal Courts

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[4] Oddly, the State argues that the Secretary of the Interior did not use the word "tribe" in approving the tribal constitution. The preamble of the Constitution, which was approved by the Secretary of the Interior, clearly states that the Native people of Circle "assert our freedom as a sovereign people in a dependent association with the United States of America." That is how this Court has described an Indian tribe from its earliest opinions dealing with the subject. *See Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

retain concurrent jurisdiction over child custody matters?" In this matter, *Matter of F.P.*, 843 P.2d 1214 (Alaska 1992) (Pet. Cert., App. A), the Alaska Supreme Court decided the matter in the negative. In *Native Village of Venetie I.R.A. Council v. State of Alaska*, 918 F.2d 797 (9th Cir. 1990), the Ninth Circuit Court of Appeals decided the matter in the affirmative. The State's opposition to the Tribe's petition acknowledged the divergent opinion of the Ninth Circuit and the Alaska Supreme courts, each of which has expressly refused to follow the other's reasoning on the issue. *See* Opposition, pp. 5-6. Equally significant, the State does not deny the importance of this issue in Alaska. As noted in the petition and in the brief of *amici*, the two courts' rulings affect over 200 Alaska tribes. There are several pending children's cases before Alaskan tribal courts, not to mention pending litigation in the State courts regarding this issue. The resolution of this controversy can only be resolved by this Court, and the importance of the issue to numerous Alaska Native tribes, families and children could not be more compelling.

CONCLUSION

The State's opposition is clearly intended to raise new issues in the case in order to avoid review of the Alaska Supreme Court's decision. The issues of the children's tribal membership and the tribal government's succession, however, have been resolved in Petitioner's favor, and cannot provide a ground for avoiding the real issue of contention: i.e., do Alaskan Tribal Courts retain concurrent jurisdiction over child custody matters? This

is the issue in permanent conflict between the Ninth Circuit and the Alaska Supreme Court. It can only be resolved by this Court. The Tribe respectfully requests the Court to grant the writ of certiorari.

Dated this May 20, 1993, at Fairbanks, Alaska.

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Counsel for Petitioner

APPENDIX A

Tribal Membership Resolutions

NATIVE COMMUNITY OF CIRCLE
CIRCLE COMMUNITY COUNCIL

RESOLUTION RECOGNIZING ELIGIBILITY FOR TRIBAL ENROLLMENT

RESOLUTION NO. 93-12

WHEREAS, the Circle Community Council has the inherent authority to determine tribal membership for the Native Community of Circle, an Indian tribe as defined under 25 USC 1903 (8), and

WHEREAS, the Circle Community Council has reviewed the ancestry and the cultural, family, and personal ties of the minor child, W.M., to the Native Community of Circle,

THEREFORE BE IT RESOLVED that the Circle Community Council determines that the child, W.M., is an Indian child under 25 USC 1903 (4) & (5), eligible for enrollment as a tribal member in the Native Community of Circle.

DULY ADOPTED THIS 4 day of MAY, 1993.

/s/ Louie A. John
Council Chief 2nd Chief

CERTIFICATION

This certifies that the above resolution was duly adopted at a convened meeting of the Circle Community Council, at which time a quorum was present. This resolution was adopted by a vote of 4 for, 0 against, with 0 abstaining.

/s/ Angela M. Ludwick
Council Secretary

NATIVE COMMUNITY OF CIRCLE
CIRCLE COMMUNITY COUNCIL

RESOLUTION RECOGNIZING ELIGIBILITY FOR TRIBAL ENROLLMENT

RESOLUTION NO. 93-13

WHEREAS, the Circle Community Council has the inherent authority to determine tribal membership for the Native Community of Circle, an Indian tribe as defined under 25 USC 1903 (8), and

WHEREAS, the Circle Community Council has reviewed the ancestry and the cultural, family, and personal ties of the minor child, A.M., to the Native Community of Circle,

THEREFORE BE IT RESOLVED that the Circle Community Council determines that the child, A.M., is an Indian child under 25 USC 1903 (4) & (5), eligible for enrollment as a tribal member in the Native Community of Circle.

DULY ADOPTED THIS 4 day of MAY, 1993.

/s/ Louie A. John
Council Chief 2nd Chief

CERTIFICATION

This certifies that the above resolution was duly adopted at a convened meeting of the Circle Community Council, at which time a quorum was present. This resolution was adopted by a vote of 4 for, 0 against, with 0 abstaining.

/s/ Angela M. Ludwick
Council Secretary

NATIVE COMMUNITY OF CIRCLE
CIRCLE COMMUNITY COUNCIL

RESOLUTION RECOGNIZING ELIGIBILITY FOR TRIBAL ENROLLMENT

RESOLUTION NO. 93-14

WHEREAS, the Circle Community Council has the inherent authority to determine tribal membership for the Native Community of Circle, an Indian tribe as defined under 25 USC 1903 (8), and

WHEREAS, the Circle Community Council has reviewed the ancestry and the cultural, family, and personal ties of the minor child, F.P., to the Native Community of Circle,

THEREFORE BE IT RESOLVED that the Circle Community Council determines that the child, F.P., is an Indian child under 25 USC 1903 (4) & (5), eligible for enrollment as a tribal member in the Native Community of Circle.

DULY ADOPTED THIS 4 day of MAY, 1993.

/s/ Louie A. John
Council Chief 2nd Chief

CERTIFICATION

This certifies that the above resolution was duly adopted at a convened meeting of the Circle Community Council, at which time a quorum was present. This resolution was adopted by a vote of 4 for, 0 against, with 0 abstaining.

/s/ Angela M. Ludwick
Council Secretary

APPENDIX B

Order of Intervention

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IN THE MATTER OF:)
)
M. A.)
DOB: 11/6/89)
)
M. W.)
DOB: 6/16/88)
)
P. F.)
DOB: 4/25/85)
)
Minors Under the Age of)
Eighteen (18) Years of Age.)
)

Case No. 4FA-91-37 CP

ORDER
(Filed May 11, 1993)

The Circle Native Community having filed its Second Motion to Intervene, and Supplemental Second Motion to Intervene; and the Court being fully apprised in the premises; it is hereby ordered that the village's Second Motion to Intervene is hereby GRANTED.

DATED at Fairbanks, Alaska this 11th day of May, 1993.

/s/ Charles R. Pengilly
Superior Court Judge

I certify that on 5-11-93
copies of this form were sent to
CLERK, BP
AG, FYS, OPA, FD, TCC

APPENDIX C

Tribal-State ICWA Agreement

INDIAN CHILD WELFARE ACT
STATE – TRIBAL AGREEMENT

BETWEEN

Native Village of Circle
TRIBE

AND

STATE OF ALASKA,
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

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ICWA STATE-TRIBAL AGREEMENT

BETWEEN

Native Village of Circle

TRIBE

AND

STATE OF ALASKA,
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

I.
INTRODUCTION

This Government-to-government agreement dated December 3, 1990 is entered into between the Native Village of Circle Tribe, hereinafter referred to as the "Tribe," and the State of Alaska Department of Health and Social Services, hereinafter referred to as the "State," pursuant to 25 USC § 1919, and under AS 47.10.230(g).

II.
PURPOSE AND POLICIES

The parties agree that there is no resource more vital to the continued existence and integrity of Alaska Native tribes than their children. Each Tribe in Alaska has a direct interest in protecting Alaska Native children who are members of or eligible for membership in the Tribe. The Indian Child Welfare Act (ICWA) recognizes the importance of this resource and declares that it is national policy to protect the best interests of Alaska Native children and to promote the stability and security of Alaska Native tribes and families.

In recognition of this policy, the State and Tribe, through their undersigned representatives, enter into the following agreement to provide state and tribal representatives with a set of written procedures for implementation of the ICWA. It is hoped that the adoption of uniform written procedures by the State and Tribe will ensure that the tenets of the ICWA are respected and followed. This agreement contemplates that both the State and Tribe will carry out the responsibilities set out herein.

This agreement is not meant to limit the legal rights of any party under the Indian Child Welfare Act.

A. Tribal Membership

The Tribe's determination of a child's membership in the Tribe shall be conclusive. (Cross Ref. V.A., page 11.)

B. Tribal Participation and Intervention

The State and Tribe agree that tribal participation and intervention are beneficial in every case involving a tribal child.

Intervention will not require that the Tribe be active in every phase of the cases in which it intervenes, only that it is a party to every case, and will receive all documents generated as part of the state court proceedings. At the time of initial intervention, the Tribe will indicate its intended activity level in a particular case.

Because placement of tribal children is the most important substantive provision of the ICWA, the Tribe agrees to participate in any phase of a case in which placement of a tribal child will be an issue. It is particularly important that the Tribe participate in the initial phases of a case, when the initial placement or disposition of an Alaska Native child is likely to occur. If the Tribe indicates that it will be inactive in a particular proceeding, the Tribe will not be required to attend all of the hearings in a custody case involving a tribal child. The Tribe may change its activity level in a case at any time by notifying the State.

The State agrees to be supportive of tribal participation by phone, in writing, or by any other means that will allow the Tribe to actively participate in a hearing. The State will recognize a tribal entity or non-profit organization which the Tribe may authorize to represent them in a child custody proceeding.

The State will not oppose any decision by the Tribe to intervene as a party in a child custody proceeding involving a tribal child unless more than one Tribe claims an interest in the child. If more than one Tribe claims an interest in a child, the State will not oppose intervention by the Tribe as a party once the relevant Tribes have agreed which Tribe shall act on behalf of the child.

C. Investigation

By entering into this agreement, tribal cooperation in child abuse or neglect investigations; including the sharing of information and the willingness of village contacts to testify in state court proceedings where appropriate, is contemplated. To facilitate the sharing of information the State will inform the tribe of any investigation involving a tribal child. The parties agree that the Tribe will designate a village contact and alternate(s) with whom the State will work on a regular basis to fulfill this agreement. (See Tribal Designation Form, Appendix I.)

The parties to this agreement recognize that the State will prioritize the investigation of reports of farm and that tribal cooperation in a child abuse or neglect investigation may be limited by available resources. (Cross Ref. V.B.1, and 2., page 11.)

D. Emergency Custody and Placement

If the State and Tribe disagree about the proposed emergency placement of the child or whether a need exists for emergency removal, the State shall proceed with temporary placement of the child, and the Tribe and State shall staff the removal within four (4) days of its occurrence. If the emergency custody of the child is released before a Child In Need of Aid (CINA) petition is filed and the child is returned to the family, the State will provide the Tribe with a copy of the report that goes to the court regarding the State's reasons for dismissing the case. (Cross Ref. V.C., page 13.)

E. Placement of an Alaska Native Child

The Tribe and the State agree that it is in the best interests of Alaska Native children who are removed from their homes, whatever the reason, to be placed whenever possible in Alaska Native homes or homes which reflect the unique values of the Tribe or of Alaska Native culture. The tribe and the State agree that they share a mutual interest in and responsibility for ensuring that placement occur in compliance with the ICWA.

The Tribe and the State agree that a child who must be placed out of his or her own home shall be placed in the least restrictive setting which most approximates a family in which the child's special needs, if any, may be met and is in responsible proximately to the parents or custodians from whom he or she was removed, in the absence of good cause to the contrary, while attempts are continuing to reunite the family. The State shall attempt

to place the child in the highest placement preference category and shall not place the child outside this order in the absence of good cause or agreement by the Tribe.

The parties agree that a child will be removed from the Tribal Village only if necessary for medical, psychological, or other examinations or interviews, or if the safety of the child cannot be ensured in the Tribal Village. The Tribe shall assist the State to identify and locate appropriate placements for a child, both within and outside the Tribal Village. If the Tribe designates a specific home as an appropriate placement for a child, the child shall be placed in that home in the absence of good cause to the contrary, as defined in section VII.E. of this agreement. (Cross Ref. VII., page 22.)

F. Licensing

It is a goal of this agreement that the Tribe will eventually assume responsibility for licensing tribal foster homes for the placement of tribal children. The State recognizes that the Tribe has the authority to develop its own licensing standards, which may not be identical to all of the standards used by the State. The State agrees to accept the Tribe's licensing standards after review if they meet basic standards to ensure the health and safety of the child. The State agrees to establish a procedure for review and acceptance of tribal licensing standards.

Once tribal foster licensing standards are accepted by the State the Tribe's selection of a home for the placement of a child shall be entitled to full faith and credit in the absence of information to the contrary. The State shall make foster care payments to tribally licensed homes for

children placed in those homes by the State. The State shall not withdraw its recognition of the Tribe's foster licensing program in the absence of a meeting between the parties to discuss problems and an opportunity for the Tribe to rectify any problems that are noted and substantiated.

The parties to this agreement recognize that tribal licensing may be limited by available resources.

G. Qualified Expert Witnesses

The State and Tribe recognize that it is appropriate to consult with experts on tribal customs and child-rearing practices in working to reunite the family, and in developing and implementing a remedial services case plan for the family and child. Use of such experts can assist the State in providing services and in making decisions with regard to Alaska Native children.

The State and Tribe recognize that the testimony of a qualified witness as defined by the ICWA is usually necessary in state child custody proceedings where the State seeks removal of an Alaska Native child from his or her parents or custodians. In this situation, the expert witness must speak to whether continued custody is likely to result in serious physical or emotional damage to the child, and whether the parents or custodians have a likelihood of changing the conduct that has caused or is likely to cause harm to the child. (Cross Ref. VI.G., page 20.)

H. Case Planning and Provision of Services

The State and Tribe agree that full participation of the family and Tribe in planning services is essential and can best facilitate achieving the goals of the ICWA. The State, the Tribe, the family and the child shall jointly staff each case and develop a case plan designed to protect the child, make a permanent plan for the child and reunite the family if possible and feasible. The State and Tribe agree to cooperate in identifying remedial services and to the degree that resources are available, providing or making them available to the family to achieve the goals of the case plans.

It is the policy of the parties to this agreement that services should be provided to the family in the Tribal Village if a case originated in that Tribal Village, or in the child's Community of Residence unless doing so is not consistent with the health, safety, and special needs of the child.

The case plan developed by the State, Tribe and family shall identify remedial services designed to reunite the family. The Tribe will participate in developing the case plan with the family and other affected parties, and in providing services to the family or child to the extent resources permit. The provisions of remedial services to the family shall include culturally appropriate services which are reasonably available.

It is the policy of the parties to this agreement that a family will not be required to meet a higher standard of care in order for a child to be returned to the home than would have been required to allow the child to remain in

the home at the time of initial intervention. (Cross Ref. VIII.A. and B., page 28.)

I. Permanency Planning

The Tribe and State shall identify a potential permanent placement within the placement preference categories for an Alaska Native child immediately, and in no event later than one (1) year from the child's initial placement. If the Tribe does not participate in placement efforts initially, the State will proceed with placement of the child consistent with the terms of this agreement. (Cross Ref. VIII.C., Page 29.)

J. Guardianship

It is the policy of the parties to this agreement that guardianship, including subsidized guardianship, shall be considered as an option in developing a permanent plan for a tribal child. (Cross Ref. VIII.D., page 30.)

K. Private Adoptions

It is the policy of the parties to this agreement that private adoption proceedings should follow the requirements of the Indian Child Welfare Act, particularly with regard to the placement of Alaska Native children within the placement preference categories of the ICWA and this agreement. The parties recognize that the State does not exercise complete regulatory control over private adoption proceedings under Alaska law, and therefore cannot control compliance with the ICWA and this agreement in

all private adoption proceedings. (Cross Ref. IX.B., page 31.)

L. Record Keeping

It is the policy of the parties to this agreement that placement information and documentation required by the ICWA will be collected and maintained by the State to its fullest capability and provided to the Tribe upon request, whether the Tribe has intervened in a particular proceeding or not. (Cross Ref. VII.A.3., page 23.)

M. Confidentiality

The State and Tribe agree to keep all information confidential regarding an Alaska Native child or a child custody proceeding under this agreement, except as required in judicial proceedings or by order of a court. The parties recognize that this confidentiality policy extends to all persons who are involved in a particular case, whether they be regular tribal or state employees, or whether they are associated with a case on an informal, contract, or consultant basis. Each party to the agreement shall be governed by the applicable confidentiality provisions of state, federal, or tribal law. (Cross Ref. VII.A.3., page 23.)

N. Reservation of Rights

This agreement is made in recognition of the current legal dispute between Tribes and the State about the legal status of Alaska Native Tribes and villages under federal and state law. The Tribe and State have entered into this

agreement before these legal disputes are resolved because of the vital interest that both parties have in insuring the health, safety and welfare of Alaska Native children. It is expected that major steps can be taken towards insuring the most effective and culturally appropriate social work practices with regards to Alaska Native children even in the absence of the immediate resolution of these issues.

Nothing in this agreement shall be construed as a waiver by the Tribe of any argument that the State lacks jurisdiction to apply its child protection laws and regulations to Alaska Native children in the Tribe's village, and the Tribe hereby expressly reserves its right to challenge the State's jurisdiction in any court of competent jurisdiction in any court of competent jurisdiction. (Cross Ref. XI., page 33.)

III.

DEFINITIONS

Terms in this agreement are to be interpreted as they are defined in the federal Indian Child Welfare Act, unless defined more specifically in this section.

"Alaska Native" means the same as "Indian" as defined in the Indian Child Welfare Act, 25 USC 1903(3).

"Child," "Alaska Native child," or "tribal child" shall refer to children who are members of the Tribe or eligible for membership in the Tribe.

"Community of Residence" is the Tribal Village or other community where the child maintains his or her primary residence at the time an investigation is initiated

or a petition is filed under this agreement. The term is not meant to apply to brief visits or temporary absences; it is meant to implicate the terms of this agreement when a child is considered by the community to be living in that community.

"Expert Witness," refer [sic] to section VI.G., on page 20.

"Guardianship" refers to the process by which a person is appointed by the court as a guardian for a child under AS 13.26.

"Intervention" refers to formally becoming a party to the state court proceeding.

"Staffing" or "Joint Staffing" refers to the cooperative process in which state and tribal representatives will work together to achieve the best result for each child who is subject to the terms of this agreement. These terms contemplate the sharing of information and resources so that both parties to this agreement can make fully-informed decisions about a child. Joint staffing under this agreement may take place in person, by telephone, in writing, or by other methods designed to communicate and reach decisions. the staffing may include other interested persons or parties; i.e. a guardian ad litem and parents.

"State" refers to the State as an entity, relevant state divisions or agencies, and to individual employees of the State, including consultants who are independent contractors, as applicable.

"Tribal representative" refers to a person who the Tribe's governing body has expressly authorized to represent the Tribe in child custody matters involving tribal children, and to represent the Tribe under this agreement.

"Tribal Village" means the Alaska Native community where the child is a member or is eligible for membership. If the child is eligible for membership in more than one tribe, then the village where the child resides or with which the child has the most significant contacts will be designated as the "Tribal Village."

"Tribe" means the Tribe as an entity, or the tribal representative who is implementing this agreement in a particular case. Where the Tribe has designated a tribal entity or non-profit corporation to act on its behalf, the term Tribe shall be used interchangeably with that entity. This agreement contemplates that the Tribe will have a tribal representative, social worker, or some other person designated to work with the State on a regular basis.

"Village Contact" or "alternate village contact" refers to a person in the Tribal Village who is designated by the Tribe to cooperate with the State during investigations in the Tribal Village under sections II.C. and V.

IV.
DELEGATION OF REPRESENTATION

The Tribe may delegate to a tribal entity or non-profit organization the right to represent the Tribe as a general matter in State child custody proceedings under this agreement. To make a general delegation, the Tribe shall

provide the information required on the Tribal Delegation Form, Appendix I.

The Tribe may delegate a tribal entity or non-profit organization to represent it in a particular child custody proceeding under this agreement by express authorization of the Tribe's governing body. If the Tribe decides to delegate another entity with the authority to represent it in an individual case, the Tribe shall provide a copy of the action authorizing such delegation to the State.

V.
INVESTIGATIONS AND EMERGENCY CUSTODY PROCEDURES

A. Determination of Tribal Membership

Policy: See Section II.A., page 2.

If the State initiates an investigation of a child it finds to be of Alaska Native descent, and the child's Tribe is unknown, but the State obtains information that the child may be a member of the Tribe or eligible for membership in the Tribe, the State will notify the Tribe as soon as possible and no event later than five (5) working days following receipt of such information, and obtain a determination from the Tribe as to whether the child is a member of or eligible for membership in the Tribe. The Tribe shall respond within thirty (30) days to inform the State whether the child is or is not a member of the Tribe, is eligible for membership, or whether the Tribe lacks sufficient information to determine membership at that time. The Tribe's determination of membership shall be conclusive. If the Tribe has information that the child may

be a member or eligible for membership in a different Tribe, the Tribe will provide that information to the State.

B. Investigation Procedures

Policy: See Section II.C., page 3.

Investigation procedures under this agreement are divided into separate sections, addressing investigation within the Tribal Village, and investigations in the child's community of residence when that place is not the Tribal Village.

1. Investigations in the Tribal Village

Upon opening an investigation, and initiating a response to a referral or referrals of suspected child abuse or neglect, the State shall notify the Tribe that an investigation has been initiated. This notification will take place by telephone, in writing, or in person as appropriate. The notification of investigation shall state the name of the child and the family that are the subjects of the investigation, and the nature of the abuse or neglect suspected.

The State expects as part of this agreement that the Tribe will designate an alternate village contact with whom the State can deal in emergency custody situations where the child involved is related to the primary village contact. If the subject of the investigation is a member of the household of the primary village contact, or is related to that contact, the State will communicate with the alternate village contact. The alternate shall have authority to

exercise all of the responsibilities of the primary village contact as set out in this section.

Upon entering the Tribal Village, the State shall communicate with the village contact unless communication has previously been made by telephone or letter.

When the state has made a determination as to whether child abuse or neglect exists and whether emergency custody is warranted, the State will inform the Tribe whether it has enough proof under the ICWA to justify removal of the child, and whether the State is concerned about the physical or emotional well-being of the child. The State will inform the Tribe of its investigation and findings, and of its decision as to whether to proceed to become involved in the case.

If the State decides to become involved in a particular case, the State will inform the Tribe of the actions it intends to take, and will discuss potential placement for the child. This information will be communicated to the Tribe before the State worker leaves the Tribal Village. If a village contact is not available to discuss the results of the investigation, the State will leave a brief written report with the tribal office or tribal social services office, or will communicate by telephone with the village contact as early as possible.

2. Investigation Process in Child's Community of Residence, Outside of Tribal Village

Where the State initiates an investigation of an Alaska Native child who is located outside the Tribal Village, the State will notify the Tribe when possible

before conducting the investigation. Use of the term "when possible" means that if the information received indicates that the child is not in danger of immediate physical or emotional harm, the State will notify the Tribe before initiating the investigation. If the child is in danger, the State will conduct the investigation and possibly remove the child, and then will notify the Tribe by telephone or by letter, as soon as possible, and in no event later than three (3) working days after the child is removed. If the Tribe has designated a tribal entity or non-profit organization to act on its behalf in the area where the child who is the subject of the investigation resides, the State will contact the tribal entity or non-profit organization under this paragraph.

Once the initial investigation has been conducted, the State and Tribe will conduct any further activity pursuant to other sections of this agreement. The State will provide the Tribe with the findings of its investigation, even in circumstances where the State concludes that further intervention is not warranted. The Tribe and State shall share information regarding the background of the family and child and any prior reports of suspected abuse or neglect or other problems in the family.

3. Investigations that do not Result in the State Opening an Ongoing Case

In cases where the State is not opening an ongoing case on a family or has not filed a Child In Need of Aid petition, but where the family needs services to prevent future problems, the State shall refer the family to appropriate services, and shall notify the Tribe of the referral

and the services recommended. The State and Tribe may staff such a case to develop a service strategy. The Tribe shall monitor families who are located in the Tribal Village as to whether they are following through with the recommended services.

C. Emergency Custody and Placement

The procedures for taking emergency custody of an Alaska Native child shall vary depending on whether the child is being removed from the Tribal Village, or from the child's Community of Residence when it is not the Tribal Village.

1. Removal from Tribal Village

Investigation procedures are discussed in Section V.B. When the State decides that emergency custody of an Alaska Native child is necessary, the State will immediately notify the Tribe if possible, prior to removing the child from the Village. The State will make every effort to place the child within the Tribal Village if an appropriate home can be identified. If the Tribe has previously identified homes to be used for emergency placement of Alaska Native children, the child shall be placed in one of those homes in the absence of good cause to the contrary.

If emergency removal from the Tribal Village is necessary, the child will be returned to the Tribal Village as soon as an appropriate placement is located by the Tribe and State, after a joint staffing, or to the parent or custodian from whom the child was initially removed if reunification is appropriate. If the child is removed from

the Tribal Village by law enforcement personnel, the State shall notify the Tribe as soon as it receives a referral on the child.

2. Removal from Child's Community of Residence when the Community is not the Tribal Village

If an Alaska Native child is removed from his or her home for emergency reasons and the State has reason to know that the child is or may be a member of or eligible for membership in the Tribe, the State will notify the Tribe within three (3) working days about such removal and where the child is placed, as well as any temporary custody hearing that is scheduled or may be contemplated. If the State does not know what tribe a child is from when it effects emergency removal of the child, it shall make diligent efforts to ascertain the child's tribe and shall notify the Tribe, under the provisions of Determination of Tribal Membership of this agreement. See section V.A.

Upon request of the Tribe, the State shall convene a staffing to review the emergency placement of the child. If the Tribe disagrees with the placement of the child and recommends another placement, the State shall follow such recommendation in the absence of good cause to the contrary.

If the emergency removal of a child is terminated before a Child In Need of Aid petition is filed or heard, the State will provide the Tribe with a copy of its report to the court on the case.

VI.
CHILD IN NEED OF AID PROCEEDINGS

A. Procedures

Policy: See Section II.B., C., D., and G., page 2.

1. General Provisions regarding Intervention and Information Sharing

The State shall provide the Tribe with copies of all motions, notices of hearings, and orders filed in the case, as well as reasonable and adequate notice of any case conferences and the opportunity to participate fully in such conferences. The State shall provide the Tribe with copies of the original case plan and all subsequent case reviews and court reports.

Upon the Tribe's request, the State will make available to the Tribe all discoverable material within fifteen (15) working days from the date the order of intervention is granted. In the event the State is unable to comply with the fifteen (15) working days due to unforeseeable circumstances, the State will advise the Tribe of the date when the material will be available.

The State shall consult with the Tribe prior to filing a petition except in emergency cases where the child is at immediate risk of physical or emotional harm. When an emergency exists, the State will consult with the Tribe about the filing of the petition as soon as possible after the petition is filed.

The State will send notice to the Tribe required by Child In Need of Aid Rule 7(e) within five (5) working days of the filing of the petition.

If the Tribe decides not to intervene in a particular case, the State will not make a complete disclosure of records and other documentation in the file to the Tribe absent a court order. The State will, to the extent possible, share information with the Tribe regarding placement of the child and information necessary for the Tribe to make services available to the family. If the Tribe decides not to intervene in a particular proceeding, it will be provided copies of the original petition, annual reviews of a proceeding, extensions of custody, State decisions to proceed with termination of parental rights or guardianship, notice of any placement review hearing, and pre-dispositional report.

2. Intervention Procedure

Intervention by the Tribe shall be governed by the rules of the State court. If the Tribe intervenes in a State court proceeding, its attorney or spokesperson shall have the right to participate as a full party in the case. The State will not oppose representation of the Tribe by a person other than an attorney, under State court rules.

The Tribe may intervene through its attorney, through a spokesperson, or through another entity delegated to act on behalf of the Tribe as described above. Parents shall be recognized as parties in the proceeding without the necessity of formal intervention.

3. Discovery

The State will provide the Tribe with all information from the State's case without the necessity of the Tribe complying with formal discovery procedures. The Tribe

will give notice that it intends to visit the State office where the case file is located, with a reasonable time frame, in order to look at the State's case file and copy relevant documents. The State and Tribe will cooperate in identifying the documents that need to be copied.

The Tribe and State agree to keep all information regarding a child custody proceeding under this agreement confidential. The Tribe shall be provided with access to all information that is released to other professionals. If the State refuses to make certain information available to the Tribe because of confidentiality concerns and the Tribe disagrees with that decision, the Tribe may seek a court order ordering the release of such information.

The Tribe shall provide the State with discoverable information and records on the child and/or family. Tribal representatives with knowledge of the case or with custody of discoverable records shall testify in the state court. If necessary to cover the costs of appearance or for other reasons, a subpoena shall be issued.

4. Miscellaneous

The Tribe may request a continuance of the initial temporary custody hearing as necessary to permit tribal participation and intervention in that proceeding. The State will attempt to minimize the cost of telephone calls necessary for the Tribe to participate, intervene, and assist in the development of case plans in individual cases.

B. Filing a Child In Need of Aid Petition

The decision to file a petition alleging neglect or abuse of an Alaska Native child is within the authority of the State.

The State and Tribe shall consult, either before or after the petition has been filed, about the merits of the petition. If the Tribe disagrees with the State's decision to file a petition, the Tribe may oppose the petition and the subsequent judicial proceedings that take place. The consultation shall include a discussion of services that the Tribe and State can perform to alleviate the need for State intervention with the child and family.

C. Notice

1. Initial, Formal Notice

In any State court proceeding involving an Alaska Native child, if the State has reason to believe that the child is a member of or eligible for membership in the Tribe, the State will send notice to the Tribe required by Child In Need of Aid Court Rule 7(e) within five (5) working days of the filing of the petition. This section also applies in those cases where the State has not previously informed the Tribe that it is investigating a child or has not previously informed the Tribe that a child has been removed who is a member of or eligible for membership in the Tribe during its investigation of the child and family.

Notice to the Tribe will include, but is not limited to, the following information:

a. The name, date of birth, and previous addresses of the child.

b. The name, date of birth, and previous addresses of the child's parents and Alaska Native custodians, if known. If the whereabouts of such persons are unknown, the State shall include a statement of the efforts made to identify or locate such persons.

c. A statement that the child appears to be or is a member of the Tribe and the reasons for such belief, or of the fact that the child may be a member of more than one tribe, including the names of the other tribes with which the child may be affiliated.

d. A statement as to whether the child is already a ward of the State court or any other court of competent jurisdiction. If the child is in custody, a copy of such wardship orders, if available, shall be attached to the petition.

e. A statement of the facts leading the State to file the petition.

f. A statement of the State's efforts to comply with the placement preferences of the ICWA and this agreement at the time the petition is filed.

g. A statement as to which other entities the State is sending notice of the proceeding.

At the time of formal notice to the Tribe, the State will provide the Tribe with a form entitled "Tribal Membership Form", by which the Tribe may inform the State in written form that the child is considered a member of the Tribe or eligible for membership in the Tribe. The Tribe shall return the form to the State within thirty (30)

days from the time it is received by the Tribe, unless the Tribe requests an extension of time to respond to the form.

2. Initial, Courtesy Notice

At the request of the Tribe, the State shall send a courtesy notice to an entity designated by the Tribe. Such a request may be made by providing the required information on the Tribal Designation Form, Appendix I.

3. Procedure for More Than One Tribe

If more than one Tribe responds to the State court ICWA child custody proceeding, the State shall notify the Tribe of the identity of the other tribes. Further treatment by the State of the Tribe as a party in such a situation shall be dependent upon a written intertribal agreement provided to the State designating the Tribe as the Alaska Native child's tribe or upon the Tribe's successful intervention in the State court proceeding as the Alaska Native child's tribe.

4. Notice in Child In Need of Aid Proceedings Involving Adoptive Parents

The State will notify the child's original Tribe of Child In Need of Aid proceedings involving adoptive parents to the same extent it notifies Tribes in proceedings involving biological parents, when removal of the child from the adoptive home is a possible end result. If the child is in an Alaska Native or other Indian adoptive

home, the State will also notify the Tribe of the adoptive parents. Also, see section IX.C., Failed Adoptions.

D. Adjudication

The Tribe, to the extent possible, shall develop a position on the following issues prior to the adjudicatory hearing on an Alaska Native child:

a) the Tribe's position on the Child In Need of Aid petition;

b) services which should be provided to reunite the family, including those services provided by the Tribe;

c) services for the family that are available in the Tribal Village, including those services provided by the Tribe;

d) recommendations for placement of the child; and

e) any other recommendations to the State or the court.

The State shall consult with the Tribe, in person or by telephone, to the extent necessary to assist the Tribe in developing positions on the items listed above. The Tribe and the State will share with each other their positions on the case before the adjudicatory hearing. If the Tribe has intervened in the case but is inactive in the adjudicatory phase, the Tribe will submit its position in writing to the State, which shall present the Tribe's position to the Court. If the Tribe is taking an active role in the case, it shall present its position in person.

The State shall notify the Tribe of the date and time of the adjudicatory hearing.

E. Disposition

The Tribe and State shall staff the case before the dispositional hearing with regard to their positions in the case on services for the family and/or child and placement of the child. This staffing shall take place sufficiently in advance of the dispositional hearing so that the position of the Tribe can be included in the pre-dispositional report to the court. The State will incorporate the views of the Tribe into its pre-dispositional report provided the information is received at least fifteen (15) days before the dispositional hearing is scheduled. The State may proceed with disposition without the Tribe's participation if the Tribe does not participate in the pre-hearing staffing or preparation of the pre-dispositional report.

The State shall notify the Tribe of the date and time of the dispositional hearing, even if the Tribe has not intervened in the case or has intervened but is taking an inactive role, except that no notice will be given if adjudication and disposition have already occurred at an earlier stage of the proceeding. The State will provide the Tribe with a copy of the pre-dispositional report. The pre-dispositional report will state what role the Tribe will play in providing services to the family or in arranging or monitoring the placement of the child, the services the Tribe has available for the family, and whether the Tribe and State disagree about any aspects of the disposition of the case, and if so, the nature of the disagreement.

The Tribe will have a representative with knowledge of the case and the services that can be provided available, in person or by telephone, to testify with regard to the Tribe's position. The State may subpoena a representative of the Tribe to testify as appropriate, and the Tribe agrees to provide such testimony.

F. Termination of Parental Rights Proceedings

The State will notify the Tribe of the date and time of the termination of parental rights hearing. The Tribe will notify the State in advance of the termination of parental rights hearing about whether they will participate as an active or inactive party. The Tribe will inform the State prior to the termination of parental rights hearing as to whether they will support or oppose the termination of parental rights petition, or if they have no position.

The State will use expert witnesses as set out in Section VI.G. in any termination hearing involving an Alaska Native child. State and federal law will control the standard of proof for termination of parental rights in any termination proceeding involving an Alaska Native child.

G. Qualified Expert Witnesses

Policy: See Section II.G., page 5.

1. Introduction

The State will use tribal experts in providing services to the family, in consultations on cultural issues involving

the family or child, and in making such assistance available to service providers and caregivers, to the extent feasible and appropriate.

There are three categories of persons who shall be considered experts under this agreement and under the ICWA:

a) a member of the child's Tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

b) a non-professional person who has substantial experience in the delivery of child and family services to Alaska Natives, and extensive knowledge of the prevailing social and cultural standards and child-rearing practices within the child's Tribe; or

c) a professional person who has substantial education and experience in the area of his or her specialty.

The Tribe recognizes that the State may not always use the experts that the Tribe has recommended in a particular case or which the Tribe places on its list of potential expert witnesses. This agreement recognizes that the Tribe and State may disagree about the desired outcome in a particular case, and that in such a situation it may be inappropriate to restrict the State to experts recommended by the Tribe. The State may use other experts in addition to or in place of those recommended by the Tribe.

2. Tribal List of Qualified Expert Witnesses

The Tribe shall prepare a list of expert witnesses who will be available to consult with the State in cases involving tribal children and identify those who may be willing to testify in state child custody proceedings under the Indian Child Welfare Act involving tribal children. The experts selected by the Tribe shall be knowledgeable in the following area or areas:

a) tribal customs and traditions relating to child-rearing;

b) tribal standards for placement of children who must be removed from their parents or custodians; or

c) tribal standards for the care and custody of tribal children.

Where cultural factors are an element in a state child custody proceeding involving a tribal child, the State agrees to strongly consider using the Tribe's list of experts for testimony. The State will attempt to use the Tribe's list of experts at temporary custody hearings.

The Tribe's list of expert witnesses shall include each witness's name, address, phone number, tribal affiliation, current employment, education, professional and/or lay experience, and the areas in which the Tribe recognizes the witness's expertise. The Tribe shall update this list as necessary. The list shall be attached and maintained as an appendix to this agreement. (See Tribal List of Qualified Expert Witnesses, Appendix II.)

Where the State proposes to not use an expert from the Tribe's list of experts, the State will inform the Tribe

to that effect and the reasons why. The State shall consult with the Tribe at the Tribe's request.

VII.

PLACEMENT OF AN ALASKA NATIVE CHILD

A. Placement Process for an Alaska Native Child

Policy: See Section II.E., page 4.

1. Initiation of Placement Process

When the State has made a decision to recommend removal of an Alaska Native child from his or her home in a non-emergency situation, the State shall consult with the Tribe within ten (10) working days, by telephone, to obtain the Tribe's recommendations for appropriate placements.

The Tribe shall designate a person or office with whom the State should begin the consultation by providing the information required on the Tribal Designation Form, Appendix I. (Also, see section V.C., Emergency Custody and Placement.)

2. Placement Procedure

The State and Tribe shall take the following steps to locate an appropriate placement for an Alaska Native child:

Within ten (10) days after a child has been removed from his or her home, the State shall contact the Tribe by

telephone or in writing to obtain the Tribe's recommendations as to appropriate placement of the child. The State shall attempt to place the child in the highest placement preference category, and shall not place the child outside this order in the absence of good cause or upon agreement by the Tribe.

The Tribe and the State shall share information on potential placements relevant to their appropriateness as foster parents, and to the extent possible, the Tribe shall assist the State in screening information and investigating potential placement options.

The Tribe and the State shall decide the most appropriate placement for the child at a placement staffing. At this staffing the child's and parents' preferences shall be considered, if appropriate. This staffing shall take place within thirty (30) days from the time the search for placements has started in the absence of agreement between the parties to extend the time. If the State and Tribe disagree on the placement of the child, the State shall notify the Tribe in writing of its intent not to follow the Tribe's placement recommendation and the reasons therefore.

If no identified placement for a child can be located within a placement preference category, the child may be placed in the next category. If a placement with an extended family member or another tribal home cannot be located or is not appropriate, the State will provide a list of potential foster or adoptive placements from other sources to the Tribe for its comments and review. This list shall include possible Alaska Native homes when available. The State will consider placements in Alaska Native

homes that are culturally related to the Tribe. The State shall place the child in the home selected by the Tribe from the list, in the absence of good cause to the contrary as defined in VII.D. The State will cooperate with the Tribe in attempts to recruit tribal homes as foster placements for the child.

Factors to consider in deciding to place the child in reasonable proximity to the parents include the parents' visiting history with the child, how often the parents move, and how long the State or Tribe has been working with the family to alleviate the necessity for the out of home placement. The placement selected should best ensure the least restrictive setting that most approximates a family and include provisions for the child's special needs, if any.

3. Placement Records

The State will make placement documentation from its case file available to the Tribe upon request.

The Tribe shall, to the extent resources permit, document in writing its efforts to identify and locate appropriate placements within the placement preference categories. The Tribe will provide such information to the State for inclusion within the State's placement records within sixty (60) days after placement of a tribal child.

The State shall maintain records of each placement made by the State of an Alaska Native child evidencing efforts to comply with the order of preferences. These records shall be made available to the child's Tribe. The

request of the Tribe shall be made in writing and be addressed to:

Director
Division of Family and Youth Services
Department of Health and Social Services
P.O. Box H-05
Juneau, Alaska 99811-0630
(907) 465-3191.

4. Review of Placements

Cases where the child has not been placed within the preference categories of this agreement shall be internally reviewed by the State every thirty (30) days until the child has been placed within such categories, the Tribe agrees to an alternative placement, or the child is placed in a potential permanent placement.

The Tribe shall be included in every six-month review on every Alaska Native child that is in out-of-home care to review the situation of the child, whether the current placement falls within the placement preference order and is serving the needs of the child, whether the child can be returned to his or her parents or custodians in the future, and whether an alternative placement would better serve the needs of the child.

The Tribe may request permission from the State, on a case-by-case basis, to obtain access to the child's therapy records and to consult with the therapist(s), if applicable.

B. Foster Care Placement Preference Order

By this agreement the Tribe designates the following order of preference for determining where the child should be placed for purposes of foster care placement:

[1] a member of the child's extended family;

[2] a foster home licensed, approved, or specified by the Tribe;

[3] an Alaska Native foster home licensed or approved by the State;

[4] an institution for children approved by an Alaska Native tribe or operated by an Alaska Native organization which has a program suitable to meet the child's needs.

The tribal designation of the order of preference for foster care placement made above may be changed by formal, written, tribal resolution given to the State under the provisions of section X.B., Amendments, of this agreement.

C. Adoptive Placement Preference Order

By this agreement the Tribe designates the following order of preference for determining where the child should be placed for purposes of adoptive placement or guardianship:

[4] a member of the child's extended family;

[1] a member of the child's Tribal Village;

[3] a member of another Tribe with whom the child is culturally related;

[2] a member of another Alaska Native tribe.

The tribal designation of the order of preference for adoptive placements made above may be changed by formal, written tribal resolution given to the State under the provisions of section X.B., Amendments, of this agreement.

D. Good Cause Not to Follow the Placement Preferences

Good cause not to follow the placement preferences of this agreement shall be determined only after a joint staffing between the State and the Tribe. Good cause shall be limited to the following factors:

1. the child has extraordinary physical or medical needs that cannot be met within the preference categories, as established by an expert witness;

2. suitable families within a placement preference category are not available after a diligent search, as set out in this section, has been completed; or

3. potential placements within a placement preference category would not ensure:

a) the least restrictive setting that most approximates a family; or

b) reasonable proximity to the parents or custodians from whom the child was removed while reunification efforts are ongoing.

If the State and Tribe agree that good cause exists, the alternative placement may be made without judicial review and the Tribe shall stipulate to the placement until

a suitable home within the placement preference categories is located. If the State and Tribe, after a staffing, disagree about whether good cause exists, the Tribe may request a court hearing to review the propriety of such alternative placement. The State shall have the burden of proof, by clear and convincing evidence, in such a hearing. This paragraph does not apply to disagreement over a specific home; it applies only to whether good cause as a general matter exists.

The State and Tribe agree that, in general, the following factors do not constitute good cause:

1. inconvenience to state officials or state agencies;

2. the social or economic status of any potential placement, or the inability of a home within the placement categories to take custody of a child without financial assistance;

3. the temporary absence of a parent or custodian from the village to take advantage of remedial or rehabilitative services;

4. emotional or physical needs of the child for which services exist within the village;

5. a parent's request for anonymity or request that a child be placed outside the placement preference categories;

6. the handicapped condition of a foster parent unless it directly affects the ability of the foster parent to care adequately for the child; or

7. bonding or attachment between the child and a foster parent where the Tribe has been actively involved in the case, provided the Tribe had notice of the case.

E. Monitoring Placements

The State and Tribe shall monitor placements of Alaska Native children under this agreement to ensure that they remain appropriate for the child and that the placements receive the support they need to be successful for the children. The Tribe and State will cooperate in efforts to monitor placements in the Tribal Village, to the extent possible, including periodic contacts or visits with the home, and periodic evaluations of the services provided, including appropriate cultural and traditional services, to the child and families.

F. Change of Placement

The provisions of this section shall apply each time that a change of placement of an Alaska Native child is contemplated. In the absence of an emergency, the Tribe and State shall staff the proposed change of placement before it takes place. If an emergency exists, the placement provisions of the emergency removal section of this agreement shall apply. The Tribe and State shall jointly staff a proposal to return an Alaska Native child to the parent(s) or custodian(s) from whom the child was originally removed. If the Tribe disagrees with the State's decision on a change of placement of a child after a staffing has taken place, the Tribe may seek judicial review.

G. Notice of Placements

The State shall send the Tribe change of placement notices which shall be in writing and include the following information:

a. the name of the prior placement;

b. the name of the proposed new placement;

c. the relationship of the new placement to the child and/or family; and

d. whether the new proposed placement is in a home that meets the placement preference categories of this agreement.

A change of placement notice shall be sent for every placement, including the initial placement after removal from the home of the parent(s) or custodian(s) and the child's return to the home of the parent(s) or custodian(s).

H. Voluntary Placements

The State shall notify the Tribe of voluntary placements involving tribal children about whom it receives notice. In voluntary placements of tribal children, the State will follow the placement process as set out in this agreement.

VIII.

CASE PLANNING

Policy: See Section II.H., page 5.

A. Timing of Case Plan

A case plan shall be developed before adjudication and disposition of a case takes place, including stipulated

or summary adjudications. In any event, no later than sixty (60) days from the date of placement or the date a case is opened, the Tribe and the State shall staff the case to develop a case plan with the family and child. The State agrees to consult with the Tribe to the extent possible to assist the Tribe in determining what services are appropriate and available for the family. The Tribe will participate in providing services to the extent possible in conjunction with the State.

B. Services

1. Services in the Tribal Village

If the child has been removed from the Tribal Village, the State will inform the Tribe in the case plan of the services that would have to be available in the Tribal Village before the child can be returned to the Tribal Village without danger. If the child has special needs such as medical needs, the State will inform the Tribe of the services that must be available within the Tribal Village before the child can be safely returned. In each of these cases, the State will specify the reasons why the child needed to be removed from the Tribal Village in the first instance, and what conditions would permit the child to be returned to the Tribal Village.

2. Remedial Services

The Tribe shall provide the State with a list of the remedial services which are available in the Tribal Village. This list will include traditional services and culturally appropriate services. The Tribe will identify services which it could provide in the Tribal Village if financial support existed or which it would like to provide but cannot for financial or other reasons.

The case plan developed by the parties to the proceeding shall identify with specificity the minimum requirements for family reunification so the family knows exactly what they must do to obtain the return of their child as early as possible. The case plan will not be modified or changed after it is established except as necessary to account for changed circumstances or new information that has been discovered.

The case plan shall identify the specific parental behaviors which the plan is attempting to alleviate or change, and shall contain, at a minimum, the following elements:

a. the services to be rendered, who is to render them, and who is to participate in each service;

b. the estimated time frame for each of the services rendered;

c. the estimated time frames within which the parental behaviors are to be corrected or alleviated, with the consequences that may occur if improvement does not occur;

d. a detailed explanation of what constitutes acceptable compliance with each of the services rendered;

e. the specific duties of the State or Tribe in providing each of the described services, including who will assist in providing access to each service and how such access will be accomplished; and

f. a proposed placement plan for the tribal child.

The State shall provide a copy of all case plans developed under this agreement to the Tribe. The Tribe will express its position regarding the proposed case plan at the time of any staffing, or at any time that the plan is not accomplishing the objectives it was designed to accomplish.

At the request of the State, the Tribe will define what are acceptable community standards within the Tribal Village. Where appropriate, the Tribe will define what it considers to be unacceptable parental conduct and parental unfitness by tribal standards.

C. Permanency Planning

Policy: See Section II.I., page 6.

The State and Tribe shall staff permanency planning for an Alaska Native child. Permanency planning shall begin at intake, and the State shall make efforts to place the child in a home that may serve as a permanent placement at the time the child is first placed. The Tribe shall be involved in permanency planning from the time a case begins, to the extent resources permit. The State

shall confer with the Tribe prior to making a final decision to proceed with termination of parental rights. The State will inform the Tribe at a regular case staffing or at any other time when the State has made a decision to recommend placing an Alaska Native child in a permanent placement. The State will use available tribal cultural consultants as appropriate in the permanency planning process.

The Tribe and State shall decide whether the initial placement is also appropriate for long term placement if attempts to reunite the family are unsuccessful. If the Tribe and State decide that the initial placement of the child is not appropriate for permanent placement, they will work to identify other potential homes within the placement preferences. Joint planning will resume in such situation when the Tribe notifies the State of its intent to participate in placement efforts for the child.

D. Guardianship

Policy: See Section II.J., page 6.

Documentation in considering guardianship as an option shall be included in the case file. Subsidized guardianship shall be actively explored in determining the best placement option for an Alaska Native child.

IX.

ADOPTIONS

A. Adoptive Placement Preference Order

Refer to section VII.C., Adoptive Placement Preference Order, page 24.

B. Procedure in Private Adoptions

Policy: See Section II.K., page 6.

Whenever the State has knowledge or when information comes to the attention of the State that a private adoptive placement involving a tribal child is contemplated, and the proposed placement for the child may be in violation of the placement preferences of the Act and this agreement, the State will file a statement with the court that the proposed placement may not be in compliance with the ICWA, and will inform the Tribe of the pending proceeding.

C. Failed Adoptions

Whenever the State has knowledge that the adoptive placement of a tribal child has failed because the parental rights of the adoptive parents are terminated, the adoption is vacated, or the adoptive parents voluntarily consent to termination of their parental rights or to another adoptive placement, the State will notify the child's Tribe and attempt to notify the biological parents or original Alaska Native custodian of the child. If it is determined after an ICWA proceeding that return of the child to the

biological parents or Alaska Native custodian is not in the best interest of the child, the State will attempt to place the child according to the placement provisions of this agreement. This section also applies to failed or terminated guardianships, as applicable.

All of the provisions of this agreement shall apply to the removal of a tribal child from an adoptive family the same as they would to removal of a child from his or her biological parents or Alaska Native custodian, except those that may extend rights to Alaska Native or Indian adoptive parents that the ICWA does not provide to non-Alaska Native or non-Indian adoptive parents.

Whenever a final decree of adoption of an Alaska Native child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Alaska Native custodian may petition for return of custody. (Also, see section VI.C.4., Notice in Child in Need of Aid Proceedings involving Adoptive Parents.)

X.

MISCELLANEOUS PROVISION

A. Effective Date

The Tribe and State may sign this agreement at different times. This agreement will be effective sixty (60) days after the later signature. The Tribal Designation Form, Appendix I, and Tribal Qualified Expert Witness List, Appendix II, are incorporated into this agreement by reference.

B. Amendments

Any provision of this agreement in which the Tribe is exercising an option or making a designation may be amended by the Tribe. Such amendments must be made by formal resolution of the Tribe and will become effective sixty (60) days after the State receives the tribal resolution. Tribal amendments must be sent to the State at the following address:

Director
Division of Family and Youth Services
Department of Health and Social Services
P.O. Box H-05
Juneau, Alaska 99811-0630
(907) 465-3191

C. Questions or Concerns

The parties to this agreement are expected to try to resolve any concerns as early as possible.

Inquiries about this agreement or concerns about compliance with this agreement should be addressed to the head of the Tribe or the Director of the Division of Family and Youth Services.

XI.

RESERVE SECTIONS

Policy: See Section II.N., page 7.

Issues Reserved for Subsequent Negotiation

The issues which are reserved for future negotiation and discussion at this time are:

1. Tribal courts;

2. Jurisdiction;

3. State funding for social services and for children placed in foster homes by a Tribe.

XII.

REVOCATION

This agreement may be revoked by either party upon 30 days written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction.

APPENDIX I

TRIBAL DESIGNATIONS UNDER THE INDIAN CHILD WELFARE ACT STATE-TRIBAL AGREEMENT BETWEEN THE STATE OF ALASKA AND _____

11/30/90
Date Approved By Tribe

_____
Date Received By State

Effective Date
60 Days From Date Received

Delegation of Representation (Cross Ref. IV.)

If the Tribe has delegated to a tribal entity or non-profit or another Tribal organization the right to represent the Tribe as a general matter, it shall provide the information required below.

Tanana Chiefs Conference, Inc.
DESIGNATED ORGANIZATION

122 1st Avenue, Fairbanks, Alaska 99701
MAILING ADDRESS

(907) 452-8251
PHONE

Tribal Village Contacts (Cross Ref. II.C; V.B.1.)

The following persons are designated to receive notice of State actions and to cooperate with State representatives in accord with applicable terms of this agreement.

Larry Nathaniel
NAME

Box 2 Circle, Alaska 99733
MAILING ADDRESS

(907) 773-7425 (mess)
PHONE

Special Instructions for Contacting: At above number noon to 4:00 p.m. Mon to Fri

Alternate: Tina Patrick
NAME

General Delivery, Circle, Alaska 99733
MAILING ADDRESS

(907) 773-1226 (mess)
PHONE

Special Instructions For Contacting: Phone number is her grandfather, Helge Boquist

A Second Alternate may be designated only if the primary and alternate Village Contacts are related. A Second Alternate may be someone outside the Village.

Second Alternate: None
NAME

_____
MAILING ADDRESS

_____
PHONE

Special Instructions for Contacting: _____

Designee For Placement Consultation (Cross Ref. VII.A.1.)

The person or office the State shall contact to begin consultation concerning the placement of a tribal child in a non-emergency circumstance is:

Don Shircel/Tanana Chiefs Conference, Inc.
PERSON/ENTITY

122 1st Avenue, Fairbanks, Ak 99701
MAILING ADDRESS

(907) 452-8251
PHONE

Designee for Courtesy Notice (Cross Ref. VI.C.2.)

The following entity is designated by the Tribe to receive a courtesy copy of initial notices sent by the State under section VI.C.2. of this agreement:

Don Shircel/Tanana Chiefs Conference, Inc.
PERSON/ENTITY

122 1st Avenue, Fairbanks, Ak 99701
MAILING ADDRESS

(907) 452-8251
PHONE

STATEMENT OF AGREEMENT

The State and the Tribe, through their undersigned representatives, hereby enter into the foregoing Agreement, which will become effective 60 days after the later signature (Section X.A.) and is ongoing until revoked (Section XII).

STATE OF ALASKA

By: Myra M. Munson
Title: Commissioner Dept. Health and Social Services
DATE: Dec. 3, 1990

TRIBE

By: Larry A. Nathaniel
Title: Chief Native Village of Circle
DATE: December 1, 1990

Instructions for Tribe: Complete two original Agreements and submit *both* to the State. When the State has signed

the Agreement, one original Agreement will be returned to the Tribe.

The following items should be completed by the Tribe:

1. Cover Page, Name of Tribe (Village)
2. Page 1: Name of Tribe (Village) – *two* places
3. Page 24: Foster Care Placement Preference Order
4. Page 24 and 25: Adoptive Placement Preference Order
5. Page 34: Revocation (number of days notice required)
6. Page 35: Appendix I
7. Page 37: Appendix II
8. Page 40 and 41: Statement of Agreement Signature Pages

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7. Page 37: Appendix II
8. Page 40 and 41: Statement of Agreement Signature Pages

NATIVE VILLAGE OF CIRCLE
VILLAGE COUNCIL
RESOLUTION NO. 90-16

WHEREAS, the Native Village of Circle recognizes that there is no resource more vital to the continued existence and integrity of the tribe than its children; and

WHEREAS, the Native Village of Circle has a direct interest in protecting the children who are members of or eligible for membership in the Native Village of Circle; and

WHEREAS, the State of Alaska has offered and agreed to enter into a government-to-government agreement between the State and the Native Village of Circle recognizing that the Native Village of Circle is a tribe and to provide state and tribal representatives with a set of written procedures for implementation of the Indian Child Welfare Act;

NOW THEREFORE BE IT RESOLVED that Larry A. Nathaniel tribal member of the Native Village of Circle, is hereby authorized to sign the ICWA State-Tribal Agreement.

Done by Council action this 30 day of November, 1990.

CERTIFICATION

I, Larry A. Nathaniel, the secretary (chief) of the Village Council for the Native Village of Circle, do hereby certify that on the 30 day of November, 1990, a quorum of the Village Council of the Native Village of Circle was formed, and passed the above resolution by 3 voting in favor and 0 voting against the measure.

/s/ Larry A. Nathaniel – Chief
Secretary

APPENDIX D

Excerpt of Opening Brief

for

Native Village of Circle

STATEMENT OF THE CASE

FACTUAL BACKGROUND

The children at issue in this action are Alaska Native children who are members of the Native Village of Circle,[1] an Indian tribe recongized under terms of the Indian Child Welfare Act (25 U.S.C. 1901 *et. seq.*)

In 1985 the mother of the children at [sic] involved in this action was arrested in California on charges of misconduct involving a controlled substance. The arrest preceded the birth of the two younger children. The oldest child, F.P., was about six months old at the time of the arrest and was taken into protective custody by the County of Santa Clara and placed in foster care with her maternal aunt. (R. 29)

In 1986, when the mother violated a Court order by leaving a residential treatment center to which she had been committed, the County of Santa Clara proceeded with permanency planning. Although the aunt petitioned for guardianship, she herself was arrested on drug charges and petition was never approved. A subsequent investigation into the history of this family revealed an extensive record of domestic violence and substance abuse by numerous family members. (R. 29, 30).

In June of 1988 the second child, W.M., was born, and was shortly thereafter placed in foster care.

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[1] On October 4, 1991, the village reorganized under the terms of the Indian Reorganization Act and changed its name to the Circle Native Community of Alaska. For the sake of consistency with the record below, the fomer name is used herein.

APPENDIX E

Affidavit of Regina Perot

IN THE SUPERIOR COURT FOR THE
STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

IN THE MATTER OF:	)
M. A.,	)
M. W.	)
P. F.	)
	)
Minor Children Under the Age of Eighteen (18) Years.	)
	)

Case No. 4FA-91-37 CP

AFFIDAVIT OF REGINA PAROT

STATE OF ALASKA)
) ss.
Fourth Judicial District)

Regina Parot, being duly sworn, upon oath, deposes and states as follows:

1. That I am the Area Tribal Operations Officer for the Juneau Area Office of the federal [sic] Bureau of Indian Affairs;

2. That I have worked in tribal operations since 1987 with the BIA;

3. That in my job as Area Tribal Operations Officer I provide guidance and technical assistance to tribal governments in Alaska;

4. That in my job I also supervise secretarial elections for adoption of Constitutions, pursuant to the Indian Reorganization Act;

5. That the Native Village of Circle, Alaska, through its traditional village council, submitted a request to reorganize under the terms of the Indian Reorganization Act;

6. That in my capacity as Area Tribal Operations Officer I reviewed the proposed IRA Constitution of the Circle Native Community, which did meet my approval, and I then submitted it to Washington D.C. where it was subsequently approved;

7. That the Circle native Community as reorganized under the IRA is the successor tribal government to the traditional council of the Native Village of Circle.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 10th day of May, 1993 at Fairbanks, Alaska.

/s/ Regina Parot
Regina Parot

SUBSCRIBED AND SWORN TO before me this 10th day of May, 1993 at Fairbanks Alaska.

/s/ Clyde D. Peters
Notary Public in and for the State of Alaska

My Commission expires on: 4/30/96

[SEAL]